IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 764 OF 2004

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders	:	Court's or Judge's Orders

Shri P.R.More, APP for the State.

CORAM: R.S.Mohite, J.
DATE : 13th January, 2006.

P.C.:

1. This is an appeal filed by the State impugning the judgment and order passed by the Judicial Magistrate First Class, I Court, Thane on 7/4/2004 acquitting the accused for the offences punishable under section 498(A), and section 494 of the Indian Penal Code. On perusal of the impugned judgment and order, it is seen that the same has been passed on cogent and acceptable reasons. So far as the offence of Section 498(A) is concerned, it is seen that after her marriage, complainant-wife resided in

her matrimonial house for the period of about only two months. Thereafter, she came and sent back to her parents house. She was residing in her matrimonial house from 15.11.97 to 13.02.98, i.e., for about two months only. Her complaint has been filed after substantial delay on 3.5.1999. It has come in the evidence of her own parents that she has deficiency of hearing immediately after child birth. The record indicates that she was not able to talk properly. The defence of accused no.1 is that these major deficiencies were not disclosed at the time of her marriage. I find that the allegations relating to cruelty are vague and admittedly, there is no demand for dowry. There is no evidence to indicate physical cruelty.

2. So far as offence under section 494 of the Indian Penal code is concerned, no eye witness to the alleged second marriage was examined. Strong reliance was placed on letter,

Ex.50, issued by the Sant Gauroba Mandir Trust to the effect that marriage of the daughter of Madhukar Bansode took place with Sanjay Dattatray Kamble on 21.11.98 at 12.35 p.m. To prove this letter, prosecution examined P.W.8-Jalinder Raut who was one of the members of the Trust and not its secretary. This witness was not present at the time of marriage. He claims to have issued letter on the basis of original receipt for the sum of Rs.51/-. The said original receipt was never produced though this witness claims that he has issued letter as per the said receipt. The witness agreed in his cross-examination that the original receipt did not bear date of marriage and that letter, Ex.50 issued by him was not as per the original receipt. In view of the said discrepancy, benefit of doubt is given

to the accused.

3. In the circumstances, it is not a fit case. Hence, the leave is refused and consequently, the appeal stands dismissed.

(R.S.Mohite, J.)